

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 KHUONG VO,
12 CDCR #J-04854,

13 Plaintiff,

14 vs.

15 AMY MILLER, et al.,

16 Defendants.

17 Civil No. 15cv0247 GPC (KSC)

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28 **ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY
FILING FEE REQUIRED
BY 28 U.S.C. § 1914(a) AND/OR
FAILING TO MOVE TO
PROCEED *IN FORMA PAUPERIS*
PURSUANT TO
28 U.S.C. § 1915(a)**

20 Kuong Vo (“Plaintiff”), currently incarcerated at Centinela State Prison (“CEN”)
21 in Imperial, California, and proceeding pro se, has filed a civil rights complaint
22 (“Compl.”) pursuant to 42 U.S.C. § 1983 (ECF No. 1).

23 Plaintiff claims CEN’s Warden, CEN Education Department Principal L. Johnson,
24 Vice Principal A. Variz, and Vocational Instructor E. Yerena, violated his Eighth and
25 Fourteenth Amendment rights in December 2013 by requiring him to take the Test of
26 Adult Basic Education or “TABE” before participating in an automotive body repair and
27 paint refinishing class at the prison. *See* Compl. at 2-5.

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1 **I. Failure to Pay Filing Fee or Request IFP Status**

2 All parties instituting any civil action, suit or proceeding in a district court of the
 3 United States, except an application for writ of habeas corpus, must pay a filing fee of
 4 \$400. *See* 28 U.S.C. § 1914(a).¹ An action may proceed despite a plaintiff's failure to
 5 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
 6 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez*
 7 *v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if the Plaintiff is a prisoner, and
 8 even if he is granted leave to commence his suit IFP, he remains obligated to pay the
 9 entire filing fee in "increments," *see Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir.
 10 2015), regardless of whether his case is ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1)
 11 & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

12 Plaintiff has not prepaid the \$400 in filing and administrative fees required to
 13 commence this civil action, and while he has submitted a letter requesting "information
 14 on how to make a monthly payment," *see* ECF No. 3, he has not filed a Motion to
 15 Proceed IFP which complies with 28 U.S.C. § 1915(a)(1) and (2). Therefore, his case
 16 cannot yet proceed. *See* 28 U.S.C. § 1914(a); *Andrews*, 493 F.3d at 1051.

17 **II. Conclusion and Order**

18 For the reasons set forth above, the Court hereby:

19 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the
 20 \$400 civil filing and administrative fee or submit a Motion to Proceed IFP pursuant to
 21 28 U.S.C. §§ 1914(a) and 1915(a);

22 (2) **GRANTS** Plaintiff **forty-five (45)** days leave from the date this Order is
 23 filed to: (a) prepay the entire \$400 civil filing and administrative fee in full; **or**
 24 (b) complete and file a Motion to Proceed IFP which includes a certified copy of his trust

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27 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional
 28 administrative fee of \$50. *See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of
 Fees, District Court Misc. Fee Schedule, § 14 (eff. Dec. 1, 2014)). The additional \$50
 administrative fee does not apply to persons granted leave to proceed IFP. *Id.*

1 account statement for the 6-month period preceding the filing of his Complaint.² *See* 28
2 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b); and

3 (3) **DIRECTS** the Clerk of the Court to provide Plaintiff with this Court's
4 approved form "Motion and Declaration in Support of Motion to Proceed *In Forma*
5 *Pauperis*." If Plaintiff fails to either prepay the \$400 civil filing fee or complete and
6 submit the enclosed Motion to Proceed IFP within 45 days, this action will remain
7 dismissed without prejudice based on Plaintiff's failure to satisfy 28 U.S.C. § 1914(a)'s
8 fee requirements and without further Order of the Court.

9 **IT IS SO ORDERED.**

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11 DATED: May 21, 2015

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13 HON. GONZALO P. CURIEL
14 United States District Judge

21 ² Plaintiff is cautioned that if he chooses to proceed further by either pre-paying
22 the full \$400 civil filing fee, or submitting a properly supported Motion to Proceed IFP,
23 his Complaint will be screened before service upon any defendant and may be
24 immediately dismissed pursuant to 28 U.S.C. § 1915A(b) or 28 U.S.C. § 1915(e)(2)(B)
25 regardless of whether he pays the full filing fee up front, or is granted leave to proceed
26 IFP and to pay it in monthly installments. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27
27 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e) "not only permits but
28 requires" the court to *sua sponte* dismiss an *in forma pauperis* complaint that is
frivolous, malicious, fails to state a claim, or seeks damages from defendants who are
immune); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing similar
screening required by 28 U.S.C. § 1915A of all complaints filed by prisoners "seeking
redress from a governmental entity or officer or employee of a governmental entity.");
see also Hudson v. McMillian, 503 U.S. 1, 9 (1992) ("[E]xtreme deprivations are
required to make out a[n] [Eighth Amendment] conditions of confinement claim.");
Ingraham v. Wright, 430 U.S. 651, 672 (1977) (procedural guarantees of due process
apply only when a constitutionally-protected liberty or property interest is at stake).